

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's motion (Doc. #92) to vacate or stay this Court's Order of December 7, 2010, or alternatively, for leave to file for a writ of mandamus or prohibition in the Court of Appeals. The December 7, 2010 Order dismissed, upon motion by Defendants, many of Plaintiff's claims arising out of her discharge on August 19, 2009, as an Office Service Representative at the Department of Revenue of St. Louis County, Missouri. The Court concluded that Plaintiff's claim that she was discharged in retaliation for the exercise of her First Amendment right to free speech remained a viable claim, but that it was not clear from the complaint which Defendants were responsible for this alleged constitutional violation.

Accordingly, the Court gave Plaintiff up to and including December 21, 2010, to file an amended complaint clarifying the matter. The Court cautioned Plaintiff that failure to file such an amended complaint in a timely fashion would result in dismissal

without prejudice of this remaining claim in the action.

Rather than file an amended complaint, Plaintiff filed the present motion to vacate the Court's Order or to stay it. None of the arguments raised by Plaintiff warrant such action. Plaintiff asks alternatively for leave to file for a writ of mandamus or prohibition with the Court of Appeals. Such leave is not required.

The Court notes that Plaintiff complains about, among other things, this Court's failure to rule on her motion for summary judgment that was filed on July 28, 2010. Although this case was not transferred to the undersigned United States District Judge until September 9, 2010, the docket sheet reflects that at the time Plaintiff filed her motion for summary judgment, no scheduling conference in the case had been set, nor had any discovery has been conducted. The Court further notes that by Order dated October 27, 2010, the Court granted Defendants' motion for leave to delay responding to the motion for summary judgment until after Defendants' motions to dismiss were resolved. The Court has now ruled on the motions to dismiss, and will set the case for a Rule 16 conference after Plaintiff files her amended complaint.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to vacate or stay the Court's Order of December 7, 2010, is **DENIED**. Plaintiff's alternative request for leave to file for a writ of mandamus or prohibition with the Court of Appeals is **DENIED as moot**, as this Court's leave to file for such relief is not needed. [Doc. #92]

IT IS FURTHER ORDERED, on the Court's own motion, that the time for Plaintiff to file an amended complaint shall be extended up to and including December 27, 2010.

The Court cautions Plaintiff again that unless an amended complaint that clarifies which Defendants are allegedly responsible for discharging Plaintiff in violation of her First Amendment rights is filed in a timely fashion, this last remaining claim will be dismissed without prejudice and a final appealable judgment will be entered against Plaintiff.

Audrey G. Fleissig
AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 20th day of December, 2010.